

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. D023/1984

BETWEEN	DR. RUTH DOORBAR	PLAINTIFF
AND	SMITH'S TRUCKING LIMITED	DEFENDANT
AND	DERRICK BYRON	THIRD PARTY
AND	GRACE WONG	
AND	EVEROLD WILLIAMS	FOURTH PARTY

SUIT NO. C.L. A239/1985

BETWEEN	ADMINISTRATOR GENERAL FOR JAMAICA (ESTATE OF PATRICK A. BYRON DECEASED)	PLAINTIFF
AND	SMITH'S TRUCK SERVICES LTD.	1ST DEFENDANT
AND	CLEMENT GARRICK	2ND DEFENDANT
AND	ERROL LYN	3RD DEFENDANT
AND	ARCHIBALD WONG O/C TERRY WONG	4TH DEFENDANT
AND	BUCKLE WILLIAMS O/C EVERAD WILLIAMS	5TH DEFENDANT
AND	GRACE WONG	6TH DEFENDANT
AND	RUTH DOORBAR	THIRD PARTY
AND	DERRICK BYRON	THIRD PARTY

SUIT NO. C.L. B360/1984

BETWEEN	DERRICK BYRON	PLAINTIFF
AND	SMITH'S TRUCK SERVICES LTD.	1ST DEFENDANT
AND	CLEMENT GARRICK	2ND DEFENDANT
AND	ARCHIBALD WONG O/C TERRY WONG	3RD DEFENDANT
AND	GRACE WONG	4TH DEFENDANT
AND	EVERARD WILLIAMS O/C BUCKLE WILLIAMS	5TH DEFENDANT
AND	DR. RUTH DOORBAR	THIRD PARTY

CONSOLIDATED CLAIMS FOR NEGLIGENCE

Miss Dorothy Lightbourne for the plaintiff Dr. Ruth Doorbar in C.L. D023/1984

Mr. W.B. Frankson Q.C., Mrs. Margaret Forte and Mr. M. Frankson instructed by Gaynair & Fraser for Smith's Truck Services Ltd. and Clement Garrick

Dr. Adolph Edwards for Grace Wong and Everold Williams

Mr. R.S. Pershadisingh Q.C., Mr. Horace Edwards Q.C. and Mr. Alvin Mandell for the Administrator General and Derrick Byron.

Hearing on September 17, 18, 19, 20, 21, 26, 27, 28, 1990, March 2, 3, 5, 6, 9, 10, 11, 12, 13, 26, 27, July 21, 22, 1992 and January 27, 1994

BINGHAM J.

These consolidated claims are the result of a motor vehicle collision which occurred on the 18th February 1982 about 10.30 a.m. It involved a Toyota Celica motor car registered D 3897 owned by the first plaintiff Dr. Ruth Doorbar and driven by her husband the second plaintiff Derrick Byron and a Mack Truck registered GA 1047 owned by the defendant Smith's Truck Services Limited and driven by the defendant Clement Garrick. The collision took place on the main road leading from the Oracabessa to Port Maria at a section of the road known as Race Course at which point, there is an "S" curve within which the road is straight for a distance which varied on the evidence between 126 and 250 feet. As a consequence of the collision the motor car was badly damaged with the major portion of the damage being concentrated on the right side of the vehicle.

Patrick Byron the brother of the driver of the motor car and a passenger seated to the right rear of that vehicle on impact suffered a broken neck which proved fatal. Derrick Byron and the other passenger Euker Green who was seated in the right front seat also received injuries. Arising therefrom three actions were launched in negligence claiming damages against the owner and driver of the Mack Truck.

It is common ground from the evidence that the collision occurred on the straight section of the main road between the two corners. It is also not in dispute that the Mack Truck was in the act of overtaking a stationary Mini bus

which was positioned with its right section close to the unbroken centre line. It was the right section of the motor car which collided with the two outer rear wheels of the Mack Truck. The force of the impact resulted in the motor car ending up in the front lawn of a residence to the left of the road as one proceeds towards Oracabessa with the car now facing the direction from which it was proceeding. The truck driver Clement Garrick related an account of the collision in which he had succeeded in overtaking the stationary Mini Bus and had manoeuvred the truck back to the extreme left of the road when the car which was travelling at a fast rate of speed came around the corner from the Port Maria direction and collided into the right rear section of the truck. On this account if accepted no liability for the collision could be attributed to the owner and driver of the truck. Despite this account, however, the allegations as set out in the plaintiff's claims resulted in the owner and driver of the truck joining the owner and driver of the Mini Bus as parties to the actions in which they further alleged negligence or contributory negligence in the manner in which that vehicle was operated at the time of the collision.

Arising from the pleadings the issues which arose for determination were:-

1. Liability as between the owners and drivers of the three vehicles.
2. Dependent on the outcome of (1) above the question of damages.

The Evidence

The chief witness in support of the claims was the plaintiff Derrick Byron, the driver of the Toyota Celica motor car. He testified to driving the vehicle from Port Antonio on the morning in question on his way to Oracabessa in St. Mary en route to Ocho Rios, St. Ann his intended destination. He was taking a good friend one Euken Green o/c Ukel to a cruise ship on which he worked which was then anchored at that port. Also with him on that journey and seated to the right rear of the car was his brother Patrick Anthony Byron. Euken Green was seated in the right front seat, the car being a left hand drive vehicle. After leaving Port Maria around 10.30 a.m. and driving on his way to Oracabessa on reaching a district known as Race Course he negotiated a curve. On approaching the curve he

reduced his speed from 35 m.p.h. to 15 - 20 m.p.h. He was proceeding on the left hand side of the road. The corner was a blind corner. When he reached the middle of this corner and could see about one and a half chains ahead he saw a Mini Bus approaching from the opposite direction coming to a stop. As soon as he saw this he then saw a yellow front truck (The Mack Truck) just come from around the stationary bus and it blocked the right half of the road as one proceeds towards Port Maria. He then pulled his car as far as possible to the left of the road onto a little concrete pavement. The right front wheel of the truck collided into the right side of the car from the section where the right indicator lights are situated and then slammed into the back of the car hitting it into an adjoining yard. The force of the impact resulted in Patrick Anthony Byron who was seated to the right rear of the car suffering a broken neck on impact. He died instantly. The plaintiff Derrick Byron lost consciousness and when he came to himself he found that he was receiving first-aid from a lady on the verandah of a house which was situated on the right of the main road as one proceeds towards Port Maria. The motor car ended up on these premises facing the direction from which it had been proceeding.

The account as related by the truck driver Clement Garrick at the hearing of this matter if accepted as a credible narrative of how the collision took place would have failed to establish any proof of negligence and for contributory negligence on the part of himself or the driver of the Mini Bus. In this regard he testified that having negotiated the corner and approaching the stationary Mini Bus, he was signalled by the driver to overtake that vehicle. He looked ahead and on seeing that the road ahead was clear, he put on his turn signal, blew his horn and then proceeded to overtake the Mini Bus and regained his correct side of the road. It was at this stage while travelling on his correct hand that the motor car driven by Derrick Byron came around the corner from the Port Maria direction at a fast rate of speed and collided into the right rear wheels of the truck. Given this factual situation the position of the stationary Mini Bus although from its position in the road an obstruction to traffic using that main road, even if improperly parked could not on this account be regarded as either a direct or a contributory cause of the collision that occurred. Moreover in the light of the

evidence of Clement Garrick that he had regained his correct hand and was proceeding on the straight between the two corners at the time of the collision it was somewhat strange and inexplicable given his account of the manner of the approach of the car travelling at a fast rate of speed and on the truck's half of the road that the car managed to avoid hitting the front and the greater portion of the right side of the truck but succeeded only in hitting into the right rear wheels of that vehicle. This fact without more would tend to suggest in all probability that the collision did not occur in the manner as related by the driver of the truck. The damage to the motor car and the two outer right wheels of the truck is more in keeping with a factual situation in which the truck which was unloaded and travelling at some speed was in the act of overtaking the stationary Mini Bus and upon seeing the approaching motor car that the driver attempted to regain his correct side of the road when the right rear section of the truck which was now occupying the greater portion of the right side of the road swung and struck the right front and side of the motor car propelling it over the adjoining yard where it ended up.

This probable finding, however, while negating the account given by the truck driver Clement Garrick and so establishing that it was his manner of driving that was the direct cause of the collision would not fully exonerate the driver of the Mini Bus from some measure of responsibility for the collision. The unchallenged evidence is that the Mini Bus was parked in this blind corner at a distance which was estimated to be about one foot from the white centre line. In this position it presented what was a clear obstruction to vehicles obtaining an unimpeded access along that busy thoroughfare. The Mini Bus was a public passenger vehicle, a situation which called for a greater degree of care and caution on the part of the driver operating it. Moreover, there was a soft shoulder about five feet wide to the left of the Mini Bus on which this vehicle while stationary could have been accommodated. Instead of parking the bus on the soft shoulder the driver had elected to come to a stop on the main road with the vehicle taking up the greater portion of the left half of the main road. While in such a position he was in the act of taking up passengers.

The duty on the bus driver to use the roadway with sufficient regard for other road users was given the circumstances breached. I hold that his conduct in the manner in which he positioned this stationary vehicle on the morning in question contributed to the collision that occurred. It was the position in which the bus was parked on the road that resulted in the truck driver having to encroach over unto the extreme right of the road in overtaking the bus. The truck driver, however, had the safer course open to him of stopping behind the stationary bus and waiting on that vehicle to proceed before continuing on his journey. He choosed the more dangerous course of overtaking the stationary bus with the disastrous consequences which followed.

Given this fact I would hold that the collision was the result of:

1. The act of overtaking on the part of the driver of the truck Clement Garrick.
2. The manner in which the Mini Bus was parked in a stationary position on the highway.

The conduct on the part of both these drivers amounted to negligence on their part.

As to the extent of their blameworthiness the defendant driver of the truck in disobeying the unbroken white centre line which prohibited overtaking at that section of the road, and who in any event was fixed by law with a higher duty of care in ensuring that in carrying out such a manoeuvre that he could execute it with safety.

The driver of the Mini Bus for his part in the manner in which he sought to stop his vehicle, parked at a point in the blind corner estimated to be about 14 feet from the middle of the corner, and at a distance in the road close to the white centre line. This position made it unsafe for overtaking by motorists approaching from behind his vehicle. Given the fact that the width of the road was estimated as between 19 feet 7 inches (Garrick's evidence) and 20 feet 6 inches (Inspector Nigel Cunningham's evidence), the combined widths of the Mini Bus and truck would have accounted for 13 feet of the road surface. The position in which the Mini Bus was parked left a mere eleven feet of road surface including some reasonable distance for safe clearance for the truck which was eight feet wide. The fact that the bus was parked in the blind corner placed a greater obligation on the driver to observe the requirements of the Road Traffic Act and its regulations as to the "rules of the road" and in parking as near to the left or offside of the road as is possible.

The evidence of Inspector Nigel Cunningham who was a Corporal of Police investigated the accident and who from his demeanour and his background I regarded as an independent and impartial witness, and whose evidence I accepted as such for the reason that he had no 'axe to grind or interest to serve'. His account lends support to the testimony of Derrick Byron as to the manner in which the collision occurred. He told of the the defendant Garrick relating to him his account of how the collision occurred at the scene shortly after his arrival there. Garrick then said that the accident occurred while he was in the act of overtaking the parked Mini Bus and the car as colliding with the rear wheels of the truck as he Garrick tried to get back to his correct side of the road.

I would accordingly hold that the defendant Clement Garrick was directly responsible for the collision which occurred to an extent for which he was 75% to blame. The driver of the Mini Bus for his part ought to be held attributable for the remaining 25%.

There being no remaining issue as to the ownership or agency in respect to both these vehicles the registered owners are held to be vicariously liable as joint tortfeasors.

Damages

Special Damages

The principles applicable in determinign the quantum of damages under this head is by now well settled, whereby such claims have to be specifically alleged and strictly proven. The three claims which are consolidated will be considered in the order in which the actions were filed.

C.I. D023/1984

This relates to the claim in respect of Dr. Doorbar's motor vehicle and the particulars of the claim for special damages when tested against the evidence in proof of the same.

The only issue was as to the claim for loss of use which based on the particulars related to the rental of a motor car for 14 weeks from February 21, to May 27, 1983, a total of \$4,200.00. There was an attempt by Dr. Doorbar by her evidence to vary this amount to \$14,000.00. She sought to support her testimony as to having paid that amount to a rent-a-car

company in Port Antonio through a bill evidencing the payment of that sum. Although she testified to having paid this amount in May or early June 1993 the document evidencing this payment (exhibit 3) as to certain particulars on it negated the fact of its existence at the period stated by this witness. The credibility of the witness was thereby shaken to such an extent as to cause me to approach the rest of her testimony with extreme caution. The claim for loss of use was, however, later abandoned by learned Counsel for this plaintiff in her final submissions which left me with the three remaining items of special damage all of which were agreed at a total of \$10,480.49 arrived at as follows:-

1.	Wrecker fee	-	\$	440.00
2.	Cost of repairs as per Assessors Report (Exhibit 1)	--		9,940.49
3.	Assessors Fee	-		100.00
				<hr/>
			\$	10,480.49

C.L. A259/1985

Blame being apportioned on the issue of liability between the owners and drivers of the Mack Truck and the Mini Van results in the issue of damages falling to be assessed in this claim under the Law Reform (Miscellaneous Provisions Act) and the Fatal Accidents Act, there being no issue that the deceased died as a result of injuries received in the collision between the Mack Truck and the Toyota Celica motor car driven by Derrick Byron.

Damages under The Fatal Accidents Act

The dependents under the Fatal Accidents Act are Patrick Anthony Byron then aged 1 year and Latoya Telela Byron, aged 4 years the two children of the deceased. There was from the pleadings some attempt being made to contend that the deceased parents were dependents. The evidence adduced, however, established that they were both self-supporting ruling out any such award to them.

The evidence as to the deceased earnings was scanty but there was the unchallenged evidence of Derrick Byron that he was an electronic technician who did odd jobs and operated a sound system at dances and public functions from time to time. There was however, no credible evidence to establish how much he

provided for maintaining his household, Miss Judith Edwards a sister was the only witness who gave evidence in this regards being someone whose testimony from her demeanour had to be viewed as being of doubtful credibility.

The minimum wage at the time of the deceased death being \$119.00 per week, recent authorities emanating from the Court of Appeal has suggested that in order to achieve a just result resort ought to be had to that sum as the datum for determining the award to the dependants.

The entire household consisting as it did of some five persons I would hold that the deceased spent \$60.00 per week on his children. The total dependency having regard to their respective ages at the time of the deceased death would be 31 years, the average being 15.5 years. The total sum arrived at would be therefore $\$60.00 \times 52 \times 15.5$ which would result in an amount of \$48,360.00 as the total benefit to be shared between the two children. This amount will bear interest at 3% as from 18th February 1983.

Under the Law Reform (Miscellaneous Provisions) Act the following heads fall for determination:

- a) Special damages including funeral and testamentary expenses
- b) Damages for loss of expectation of life
- c) Damages for lost years.

Special Damages

The total sum claimed under this head amounted to \$9,092.77 arrived at as follows:-

(1) Cost of administration (testamentary expenses)	\$ 1,012.77
(11) Funeral expenses	4,500.00
(111) Property damage	3,580.00
	<hr/>
	\$ 9,092.77

The evidence adduced in support of this head of the claim came from the testimony of Derrick Byron. No evidence was led in support of the claim for testamentary expenses. Such costs, however, can be recovered on a taxation as being necessary and incidental to the filing of a claim for the benefit of the estate.

The witness Derrick Byron deposed to the cost of the funeral as being between \$4,000.00 and \$5,000.00, an average sum of \$4,500.00. The cost of the watch which the deceased was wearing at the time of the collision and which was destroyed was estimated as being valued at \$1,000.00. I would accept both sums as being reasonable and would make an award for the special damages recoverable under this head as being \$5,500.00.

Damages for loss of expectation of life is usually a conventional sum. Having regard to the steep rise in inflation I would make an award of \$10,000.00 under this head.

The "lost years"

I have determined that the sum to be applied to fixing the dependency ought to be the minimum wage at the time of the deceased death, being \$150.00 per week, the contribution for the children being \$60.00 per week. In keeping with the recent decisions of the Court of Appeal, I would apply a multiplier of 10 years. In this case I would award \$60.00 x 52 x 10 a total of \$31,200 as damages for the "lost years".

In summary the awards are as follows:-

- (1) Under the Fatal Accidents Act \$48,360.00 with interest at 3% as of 18th February 1983
 - (2) Under the Law Reform (Miscellaneous Provisions) Act
 - a) Special damages \$ 5,500.00
 - b) Loss of Expectation of Life 10,000.00
 - c) Damages for lost years 31,200.00
- \$ 46,700.00

The special damages of \$5,500.00 is to bear interest at 3% as from 18th February, 1983.

Costs to be agreed or taxed.

C.L. B360/1986

Before examining this head of the claim one ought to observe that although Derrick Byron was the recipient of the injuries alleged to have been received in this collision and which have been particularised in the statement of the claim, the expenses which it is alleged to have been paid for medical treatment, transportation etc., were paid by the first plaintiff Dr. Ruth Doorbar. The manner

in which this witness has testified lead me to have to look for corroboration of her testimony as to the proof of each and every particular as alleged in proof thereof, save and except that in so far as these have not been challenged in cross examination. Of the nineteen separate particulars of personal injury alleged to have been received by this plaintiff no medical evidence was adduced to support any of these injuries. One had the remarkable situation of Dr. Ruth Doorbar, a Consultant Psychologist who is not unfamiliar with giving evidence in these Courts attempting to give expert medical evidence supporting the particulars pleaded. Needless to say her testimony in this regard which was valueless and totally lacking in weight was rejected.

As to the several visits made by the plaintiff to Dr. Antonio in Port Antonio as well as the three visits to Dr. Charles at Oxford Medical Centre around 1988 or 1989, there were no doubt an attempt being made to create the impression that the plaintiff was receiving medical treatment over a period lasting around five to six years. Not one bill or receipt was tendered in support of the payments which Dr. Doorbar said she made for these visits.

As the particulars of the injuries alleged to have been received by Mr. Byron would have had borne some relationship to the visits made to these two doctors, one would have at least expected the demeanour of this plaintiff to be borne out by the representing in the witness box someone so traumatised by this accident as to still carry at least some of the scars of this unfortunate incident. Far from this being so, the plaintiff's demeanour portrayed him to be a person who gave his evidence in a manner which suggested that he had no difficulty whatsoever in understanding the many and varied questions to which he was subject in cross examination. He was fully at ease in the witness box during the period that he gave his evidence. For someone, who if the opinion of Miss Janice Evans, a Consultant Psychologist of some nineteen years standing and a good friend of Dr. Doorbar whether or not she acknowledged her as such; if her evidence is to be believed and who examined Mr. Byron on 24th May 1989 more than six years after the accident that he was suffering from retrograde amnesia and being of the opinion that he had suffered significant brain damage and was now functioning at 60% of his pre-accident potential.

Dr. Charles Theisiger, a psychiatrist carried out an examination of the plaintiff Byron on 28th November, 1989. Before this examination he got a history from Mr. Byron and his wife Dr. Doorbar. He also had the benefit of the psychological assessment done

by Miss Evans. He found no abnormal signs nor any disorder of Byron's thought processes and the subject Byron did not admit of any disorders of perception. An Electro-Encephelogram (E.E.G.) or brain scan which was ordered also revealed no signs of abnormality to that organ but given the history of bouts of irritability accompanied by violence, information provided by Dr. Poorbar and the findings contained in Miss Evans' report, Dr. Theisiger concluded that such conduct on Byron's part if true was consistent with post traumatic brain syndrome. This organic brain dysfunction as he termed it was minimal. His opinion he said was guarded as at the time of his examination it was too early to say whether this brain dysfunction is still present or is likely to recur.

Miss Evans' assessment was arrived at by subjecting Mr. Byron to some seven tests carried out at one sitting over a continuous period of two and a quarter hours. Based on the result his performance was regarded by her as an average one and was not in keeping with a person who had impressed her as being of above average intelligence for the normal Jamaican male. Miss Evans admitted that the instances in which the subject (Byron) failed to achieve at least an average score (grade) may have been due to tiredness. As this was the first opportunity she could have had for making such an assessment of the subject she could only have formed such an opinion during the interview which she conducted prior to the testing exercise. Given the absence of any available data as to the subject's school records (he had left school at the age of fifteen years), I would regard this conclusion of the subject as being of above average intelligence on her part as at most an educated guess. The test results which formed the basis for her opinion that Mr. Byron had suffered brain damage which she assessed as 'pretty gross' was not borne out by either Dr. Theisiger's 'guarded' opinion or by Mr. Byron's demeanour in Court. It bears repeating that this witness (Byron) testified over a period lasting several days, during which he was subject to the most rigorous cross examination. His evidence was of extreme importance being the common link inter-connecting and running through the fabric of all three claims. His account of the events touching on the circumstances of the accident an incident which claimed his brother's life was for the most part clear and there was nothing to suggest that his memory recall of these events was in any way affected. Moreover, his performance during the hearing resulted in leading Counsel who appeared on his behalf, Mr. Pershadsingh agreeing in his closing address that it was clear that his client from his demeanour had made a full recovery from his injuries.

In my view having seen and heard Miss Evans and observed her demeanour over the several days that she spent giving evidence in this case, I would regard her testimony touching on her assessment of Mr. Byron as exaggerated and not borne out by the facts.

Without any available evidence of this subject intellectual attainment at the primary school level which was where he received his education, and in the brief pre-test interview formed the view that this subject was above average intelligence for the Jamaican male. Given this broad statement leading Counsel for two of the defendants Mr. Frankson was lead to direct the following question to the witness:-

"Q: Judging from the present intellectual level of the subject he would have to have been a near genius to suffer any significant brain damage and maintain that level of intelligence?
Her response was equally startling.

A: No Sir. That sentence summary does not mean that. I now suggest I agree with that."

While not ruling out entirely the possibility of some minimal trauma to the plaintiff's head the evidence of both Miss Evans and Dr. Theisiger, the former for the reasons stated and the latter who sought to place, great reliance on Miss Evans' report. The report as to the interview conducted by Dr. Theisiger revealed no signs of abnormality in the plaintiff and the brain scan (E.E.C.) proved negative. The opportunity to obtain the opinion of a Neuro-Surgeon or a Neurologist was not seized upon and what the Court is left with to come to a conclusion of fact on is the result of a psychological examination conducted over a two hourly period without any available data as to the pre-accident educational or intellectual attainment of the subject. What is even more remarkable is the absence of any medical evidence to support any of the several injuries catalogued in the particulars of injuries as set out in the statement of claim. As Dr. Edwards in his closing address has rightly observed not only is this so, but moreover an additional particular of injury namely brain damage which was not pleaded in the particulars of injury in the statement of claim has now been advanced in support of the claim for general damages. The highest that one could attribute to the evidence in this area of the claim is that the subject Derrick Byron received an head injury in the accident which caused him to be admitted at the Port Antonio Hospital for two days for treatment and observation after which period he was discharged.

Having regard to the absence of any medical evidence from a doctor as to the nature and extent of his injury(ies) one is unable to properly assess what would amount to a reasonable award for compensation. The manner in which the collision occurred bears out the fact that the force of the impact was concentrated to the right side of the motor car and was away from the section of the vehicle at which the plaintiff Byron was seated, the vehicle being a left hand drive car. This would account for him being able to take such an active role in speaking to the driver of the Mack Truck, Clement Garrick so soon after the collision had taken place.

Mrs. Forte in her final address has suggested an award of \$14,000.00 as being a reasonable sum for pain and suffering and loss of amenities.

Mr. Pershadinsgh on the other hand while leaving the matter open for the Court to determine the award has relied on C.L. 1979/R41 Anthony Rose (by next friend Yvonne Walker) and Yvonne Walker vs. Thomas Smith p. 210 of Volume 2 of Mrs. Khan's compilation on Recent Personal Injury Awards made in the Supreme Court.

Given the facts in that case I would regard it as being out of line and of no relevance to the instant case, as the nature of the injuries received in that case which on the medical evidence adduced attracted a much higher award than the instant case.

The plaintiff Byron's damages falls to be assessed based on some evidence of a few cuts on the face and a swelling to the forehead which injury resulted in him being admitted at the Port Antonio Hospital for observation and discharged after spending two days in that institution. His total period of recuperation was six months during which I accepted his evidence that he suffered from headaches from time to time. After this period he had recovered sufficiently to resume working on the farm. This would rule out any consideration being given to the evidence from Dr. Doonan that Mr. Byron was still visiting Dr. Antonio several years following the accident. I regard her evidence in this regard as not being frank with the Court.

Given the nature of the injuries received by Mr. Byron the period for which he was disabled, and not discounting entirely the opinion of Dr. Theisiger of a minimal trauma to the brain, which injury given the demeanour of the plaintiff he is now fully recovered from, I would consider an award of \$15,000.00 at the time of the accident in February 1983 as being a reasonable sum for pain and suffering and loss of amenities. When this amount is converted into the money of the day using the Consumer Price Indices for November 1993 issued by the Statistical Institute of Jamaica this would calculate

at a sum in the range of \$150,000.00.

Special damages

The particulars pleaded in this regard was for the most part unsupported by any credible viva voce or documentary evidence.

The admonition given by Lord Goddard C.J. in Bonham-Carter v. Hyde Park Ltd. [1948] 64 T.L.R. p. 177 at p. 178 that:

"Plaintiffs must understand that if they bring actions for damages it is for them to prove their damage, it is not enough to write down the particulars and, so to speak, throw them at the head of the Court, saying: "This is what I have lost; I ask you to give me these damages". They have to prove it.

In the light of the above statement which I adopt, of the items claimed under this head of damages the only items for which there was proof measuring up to the required standard was for:-

Extra help on the farm for six months during the period that the plaintiff was recuperating which on the evidence would have been calculated at \$100.00 per week, a total of \$2,600.00 and the value of the seiko watch which was destroyed, a gift from Dr. Doorbar costing \$1,365.00. Of the medical expenses and the many visits to Dr. Antonio lasting over five years according to Dr. Doorbar's account for which she said she paid Dr. Antonio \$60.00 per visit, in the absence of any documentary evidence to support these payments I would not be inclined to make any award in the face of the known and accepted practice that it is not the normal practice for professionals in related disciplines to charge one another, a practice which would certainly apply as well to their spouses. In any event I would regard Dr. Doorbar's evidence of payments made over such a long period as groundless in the light of the fact that the plaintiff Byron was well enough to resume working on the farm six months following the accident. This effort on his part would require more than a normal degree of physical endurance on his part.

Also allowed was a claim for \$80.00 paid to the Port Antonio Hospital for an X-Ray done when the plaintiff was a patient at that institution. Of the remaining items being the payment alleged to have been made to Dr. Charles Theisiger, Miss Evans, Dr. Charles and for an E.E.G. at the University Hospital of the West Indies, all allegedly made in 1989, these can properly be regarded as costs incurred as incidental to the preparation for the trial of the action and recoverable on taxation. The writ of summons in this matter was filed on 19th August 1986, a period which predated any of these visits and at a time when the hearing of the action was pending.

In light of the above I would limit the award for special damages as follows:-

a) Extra help for 26 weeks as from 18/2/83	=	\$ 2,600.00
b) Value of seiko watch destroyed	=	1,565.00
c) Cost of X-Ray at Port Antonio Hospital	=	80.00
		<hr/>
		\$ 4,045.00

which is the sum allowed under this head.

Before parting with this matter it may be convenient at this stage to dispose of a matter which was dealt with at the commencement of the address of learned Counsel Dr. Edwards on behalf of Archibald Wong o/c Tenny Wong who is a defendant on the record in C.L. B360/1986 and C.L. A239/1985. He was sued in the capacity as being a joint owner of the Motor Van NF 6739. This allegation was denied in the Defence filed on his behalf in both actions. No evidence was adduced at the hearing to establish that on the date of the collision out of which these several claims arose, this defendant was the registered owner of the said vehicle.

Judgment is accordingly entered for this defendant against the plaintiff in both actions with costs to be agreed or taxed.

In summary there will be judgment for the plaintiffs in the respective claims as follows:-

1. C.L. D023/1984

Judgment for the plaintiff in the sum of \$10,480.00 with costs to be agreed or taxed.

2. C.L. A239/1985

Judgment for the plaintiff in the sum of \$95,060.00 with costs to be agreed or taxed.

Judgment for the fourth defendant Archibald Wong o/c Tenny Wong against the plaintiff with costs to be agreed or taxed.

Judgment for the third parties against the plaintiff with costs to be agreed or taxed such costs to be paid by 1st, 2nd, 5th. and 6th defendants.

3. C.L. B360/1986

Judgment for the plaintiff in the sum of \$154,045.00 with costs to be agreed or taxed being:-

- | | |
|---|---------------|
| a) Special damages | \$ 4,045.00 |
| b) General damages for pain and suffering | \$ 150,000.00 |

Judgment for the third defendant Archibald Wong o/c Tenny Wong against the plaintiff with costs to be agreed or taxed.

Judgment for the third party against the plaintiff with costs to be agreed or taxed such costs to be paid by 1st, 2nd, 4th, and 5th defendants.

Damages and costs apportioned between the several defendants Smith's Trucking Limited, Clement Garrick, Grace Wong and Everold Williams to the extent that they have been found ^{be}blameworthy.

C.L. D023/1984

Interest awarded on special damages at 3% as from 18th debruary, 1983 to 27th January, 1994.

C.L. E360/1986

Interest awarded on special damages at 3% as from 18th February, 1993 to 27th January, 1994 and on general damages at 3% from the date of service of the writ to 27th January, 1994.

Stay of execution granted for six weeks.